



Ohio Legislative Service Commission

Bill Analysis

Joe McDaniels

Am. Sub. H.B. 182* 131st General Assembly (As Reported by S. Ways and Means)

Reps. Schuring, Baker, Anielski, Antonio, Arndt, Brown, Buchy, Burkley, Celebrezze, Dovilla, Driehaus, Duffey, Fedor, Ginter, Green, Hackett, Hambley, Hayes, Landis, Lepore-Hagan, Manning, McColley, M. O'Brien, S. O'Brien, Patterson, Perales, Reineke, Rezabek, Rogers, Romanchuk, Schaffer, Sears, Sheehy, Slaby, Slesnick, K. Smith, R. Smith, Sprague, Strahorn, Sweeney, Thompson, Young

BILL SUMMARY

- Reorganizes the law governing joint economic development districts (JEDDs) created under the state-wide procedure into one Revised Code section.
- Specifies that JEDDs may be created for "redevelopment" purposes.
- Allows "mixed-use developments" (i.e., real estate projects that integrate some combination of retail, office, residential, hotel, recreation, and other functions) to be included in the territory of a JEDD.
- Allows the contracting parties to designate "excluded parcels" within the boundaries of a JEDD that are not part of the JEDD nor subject to the JEDD income tax.
- Allows the imposition of a JEDD income tax on the income of individuals residing within the boundaries of the JEDD.
- Requires that JEDD income tax revenue be used to carry out the economic development plan for the district and other "lawful purposes" of the contracting parties.
- Clarifies that JEDD income tax revenue may be used for the provision of utility services.

* This analysis was prepared before the report of the Senate Transportation Ways and Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires that JEDD contracts expressly include an economic development plan, procedures for appointing the board of directors of the JEDD, and a restatement of the law prohibiting municipal annexation of unincorporated JEDD territory.
- Specifies that only the record owner of real property or a person with authority to make legally binding decisions on behalf of a business may sign a petition approving a JEDD contract or amendment.
- Requires the contracting parties to send written notice to property and business owners that did not sign the petitions supporting an amendment to add territory to a JEDD.
- Authorizes the contracting parties to amend an existing JEDD contract for the purpose of removing territory from the JEDD or designating excluded parcels within the JEDD.
- Requires contracting parties to equally share the costs of circulating petitions to property and business owners and sending notice to property and business owners that did not sign the petitions when approving or amending a JEDD contract.
- Eliminates the requirement that the contracting parties send notice to each affected county before and after adopting a JEDD contract.
- Establishes a procedure permitting the owner of a business operating in the unincorporated territory of a JEDD to file a complaint with the Court of Common Pleas seeking exemption from the JEDD income tax on behalf of the business and its employees.
- Authorizes affected school districts to waive the exclusion of retail facilities from the tax benefits available in enterprise zones.
- Expands the class of low-income community businesses eligible to receive credit-eligible investments for the purposes of Ohio's New Markets Tax Credit.
- Creates a property tax exemption for real property owned by a nonprofit corporation that is certified by the Federal Small Business Administration as an intermediary lender in the Federal Microloan Program.
- Extends, to December 31, 2016, the deadline for municipal corporations to report information necessary for the Municipal Income Tax Net Operating Loss Committee to compute the fiscal effects of recent changes to the law governing municipal income tax net operating loss deductions.

- Lowers the contribution threshold necessary to maintain an income tax refund contribution "check-off" option.

CONTENT AND OPERATION

The bill reorganizes the law governing joint economic development districts (JEDDs) created under the law that currently applies throughout the state. It also makes numerous changes respecting the creation, amendment, and operation of such JEDDs. Finally, the bill authorizes affected school districts to waive the requirement, under continuing law, that retail facilities be excluded from the tax benefits available in enterprise zones.

JEDDs – background

JEDDs are territorial districts created by agreement of the legislative authorities of municipal corporations, townships, and, under certain circumstances, counties. The purpose of a JEDD is to promote economic development, create and preserve jobs, and improve the economic welfare of the people in the state and in the area of the contracting political subdivisions. Generally, these purposes are accomplished by imposing an income tax within the district and sharing the revenue and other resources among the subdivisions. The revenue and resources may be used to enhance infrastructure in the area surrounding the district, provide new and additional services and facilities to the district, accomplish other objectives that may be specified in the JEDD contract, and supplement the revenue of each subdivision. JEDDs are governed by a board of directors composed of members representing each of the contracting parties. If businesses operate in the JEDD, two additional members represent the businesses and the people working in the JEDD.

There are three statutory procedures for creating a JEDD. The first two "restricted" procedures are available only to municipal corporations and townships that are located in a charter county, to JEDDs composed solely of municipal territory that includes an airport, to municipal corporations that have previously created a JEDD composed solely of municipal territory that includes an airport, or to municipal corporations and townships that are part of or contiguous to a transportation improvement district and that created a JEDD before November 15, 1995.¹ The third procedure is available to municipal corporations, townships, and counties throughout the state. The bill makes changes only to JEDDs created under the state-wide procedure.

¹ R.C. 715.70(A), not in the bill.



Reorganization of JEDD law

The bill consolidates the law governing JEDDs created under the state-wide procedure into section 715.72 of the Revised Code. Currently, these provisions are codified as sections 715.72 through 715.81. A significant portion of the bill's underlined text in section 715.72 is identical to current law. This analysis addresses only substantive changes in the language.

Purposes

Under continuing law, the purpose of a JEDD is to "facilitate economic development[,] create or preserve jobs and employment opportunities[,] and to improve the economic welfare of the people in this state and in the area of the contracting parties." The bill adds "redevelopment" as a lawful JEDD purpose.²

Territory requirements

Current law prohibits political subdivisions from designating a JEDD that includes territory where electors reside. The bill retains a general restriction against JEDDs in residential areas, but authorizes the inclusion of mixed-use developments even if electors live there when the JEDD is designated. ("Elector" is not defined for this purpose. Under the elections law, an elector is a person who is legally qualified to vote.³) A "mixed-use development" is defined as a "real estate project that tends to mitigate traffic and sprawl by integrating some combination of retail, office, residential, hotel, recreation, and other functions in a pedestrian-oriented environment that maximizes the use of available space by allowing members of the community to live, work, and play in on architecturally expressive area with multiple amenities."⁴

Continuing law requires that the territory of a JEDD be located within the territory of one or more of the contracting parties. All territory of the contracting parties may be included except for parcels of land owned by or leased to a township or municipal corporation that is not a contracting party and that has not given its consent to have the parcel included in the JEDD.⁵

² R.C. 715.72(C).

³ See R.C. 3501.01(N) and 3503.01.

⁴ R.C. 715.72(A)(9) and (E)(1)(b).

⁵ R.C. 715.72(E)(1)(a) and (c).



Excluded parcels

The bill allows contracting parties to designate one or more excluded parcels that, despite being located within the boundaries designated in the JEDD, are not part of the JEDD. Net profits and income generated or earned within an excluded parcel are not subject to any income tax levied by the JEDD contract. The notice and petition requirements that apply to owners of property and businesses located in proposed JEDD territory do not apply with respect to excluded parcels.

Excluded parcels may be identified within an original JEDD contract or by amendment to an existing JEDD contract. Continuing law requires municipal corporations, townships, and counties to make certain documents available for public inspection before adopting or amending a JEDD contract. Among these documents is a map in sufficient detail to denote the specific area included in the JEDD. The bill specifies that, in addition to the map, the contracting parties must identify the parcel number of each excluded parcel.⁶

Current law neither explicitly authorizes nor prohibits the designation of excluded parcels within the territory of a JEDD. There is no express statutory requirement that a JEDD be designated by a single continuous boundary.

JEDD income tax

To the extent authorized under a JEDD contract, continuing law allows the JEDD board of directors to levy an income tax within the JEDD. The JEDD income tax is administered by a municipal corporation that is a contracting party. The tax rate may not exceed the highest rate levied by a municipal corporation that is a contracting party. Under continuing law, the tax base includes the income of persons working within the JEDD and the net profits of businesses operating within the JEDD.

The bill adds the income of persons living within the JEDD to the income tax base. Currently, the tax does not apply to such individuals except to the extent that the individual's income is earned from services rendered in the JEDD.⁷

The bill modifies the purposes for which the revenue derived from a JEDD income tax may be used. Under current law, JEDD income tax revenue must be used for "the purposes of the district . . . and for the purposes of the contracting parties."⁸ The bill requires that such tax revenue be used to carry out the economic development plan for

⁶ R.C. 715.72(E)(2), (F)(5)(f), (I)(1)(b), and (L)(1).

⁷ R.C. 715.72(F)(5).

⁸ R.C. 715.74(C)(1) of current law.



the JEDD and for any other "lawful purpose" of the contracting parties pursuant to the contract, including, specifically, the provision of utility services. Continuing law unchanged by the bill requires that the contracting parties annually set aside a percentage of the JEDD income tax revenue for the long-term maintenance of the territory included in the JEDD.⁹

Contents of the JEDD contract

The bill explicitly requires JEDD contracts to include an economic development plan for the JEDD, the procedures for appointing the board of directors of the JEDD, and the statutory prohibition against municipal annexation of unincorporated JEDD territory. Current law requires the contracting parties to develop an economic development plan for the JEDD and procedures for appointing the board of directors, but does not directly mandate that such items be included in the JEDD contract. Similarly, the annexation provision is identical to existing law but is not currently required to be incorporated into the JEDD contract.¹⁰

Petition requirements

The bill makes several changes to the procedure for circulating petitions before approving a JEDD contract or amendment. Continuing law requires the contracting parties, before adopting the contract or amendment, to circulate petitions to the owners of real property and businesses located in the JEDD. The petitions must specify that a copy of the JEDD contract or amendment, a description of the area to be included in the JEDD, and, if applicable, a schedule for the collection of the income tax are available for public inspection. No contracting party may formally approve the contract or amendment until the petitions are signed by a majority of the owners of real property located in the proposed JEDD and the majority of the owners of businesses located there.

The bill specifies that the petitions to be circulated among property owners need be circulated only among the "record owners" of real property, meaning the person or persons in whose name a parcel is listed on the county tax list or tax-exempt list. Regarding the petition to be circulated among business owners, the bill specifies that "owners" who may validly sign a petition includes only a partner of a partnership, a member of a limited liability company, a majority shareholder of an S corporation, a person with a majority ownership interest in a pass-through entity, or any officer, employee, or agent with authority to make legally binding decisions. The bill also

⁹ R.C. 715.72(F)(5)(a) and (e).

¹⁰ R.C. 715.72(F)(3), (4), and (6).



clarifies that a business "operates within" the district if the net profits of the business or the income of employees of the business would be subject to an income tax levied within the district.

Under the bill, the petitions circulated by the contracting parties must clearly indicate that, by signing the petition, the property or business owner consents to the JEDD contract or amendment. The bill also authorizes the contracting parties to send written notice of the petitions by certified mail with return receipt requested to the last known mailing address of property and business owners.¹¹

Amending a JEDD contract

Continuing law allows the contracting parties to amend an existing JEDD contract for the purpose of adding new territory to the JEDD. Such an amendment is approved upon the adoption of a resolution or ordinance by each of the contracting parties. Each contracting party, before adopting the resolution or ordinance, is required to hold a public hearing on the amendment and give at least 30 days' public notice of the time and place of the hearing in a newspaper of general circulation in the municipal corporation, township, or county, as applicable. Furthermore, the contracting parties are required to circulate petitions to the record owners of real property and the owners of businesses operating within the area to be added to the JEDD. The petitions are circulated and signed in accordance with the same rules and procedures for new JEDD contracts (described above).

The bill requires the contracting parties, within ten days after adopting an amendment that adds territory to a JEDD, to send notice of the amendment to each record owner of real property and the owner of each business operating within the territory added to the JEDD. The contracting parties are not required to send notice to property and business owners that signed the petitions circulated before the adoption of the amendment. Otherwise, the bill's notice requirement for amendments is identical to the requirement that applies to the adoption of new JEDD contracts.

The bill authorizes contracting parties to remove territory from a JEDD or designate excluded parcels by amending the JEDD contract. An amendment removing territory or designating excluded parcels must be adopted in the same manner as an amendment that adds territory to the JEDD except that the petition and notice requirements do not apply to such amendments.¹²

¹¹ R.C. 715.72(A)(4) through (7), (J), and (K).

¹² R.C. 715.72(L).



Cost sharing

The bill requires contracting parties to equally share the costs of circulating petitions to property and business owners and sending notice to property and business owners that did not sign the petitions when approving or amending a JEDD contract. Nothing in current law addresses how contracting parties split the costs of complying with such procedural prerequisites.¹³

Notice to counties

The bill eliminates the requirement that the contracting parties send notice to each affected county before and after adopting a JEDD contract. Under current law, the board of county commissioners of each county in which a contracting party is located is entitled to a copy of the JEDD contract and certain related documents before and after the contract is adopted.¹⁴ Under the bill, the contracting parties would be required to send such documentation only if the county is a party to the JEDD contract.

Application for exemption from JEDD income tax

The bill establishes a procedure by which the owner of a business operating within a JEDD may file a complaint seeking exemption from the income tax on behalf of the business and its employees. The owner's complaint must be filed with the Court of Common Pleas of the county in which the majority of the territory of the JEDD is located within six months of the effective date of the JEDD contract. The complaint must establish all of the following: (1) that the business operated within the unincorporated area of the JEDD before the effective date of the contract, (2) that no owner of the business signed the petition for approving the contract (described above), and (3) that neither the business nor its employees has derived or will derive any material benefit from the services, facilities, and improvements described in the economic development plan for the JEDD or that any benefit derived is negligible in comparison to the income tax revenue generated from the net profits of the business and the income of its employees.

The business owner filing the complaint must serve notice by certified mail upon the legislative authority of each contracting party. Each such contracting party is a party to the proceedings and may submit a written answer to the complaint. The answer must be filed with the Court within 30 days after the contracting party was served notice of the complaint and must include documentation sufficient to prove that the contracting party sent a copy of the answer to the business owner who initiated the proceedings.

¹³ R.C. 715.72(J), (K)(2), (L)(3), and (L)(5).

¹⁴ R.C. 715.75 and 715.76 of current law.



The Court is required to make a determination with respect to the complaint between 30 and 60 days after receiving the complaint. The determination may be made later if the business owner and the contracting parties consent. The Court may, but is not required to, hold a hearing on the complaint and request the presence of the business owner and one or more contracting parties to present relevant evidence. If the Court determines that the business owner has demonstrated that all of the previously described criteria are met, the net profits of the business and the income of its employees are exempt from the JEDD income tax.

If the Court determines that the criteria have not been met, the Court is required to deny the complaint. If a complaint requesting exemption is denied, all taxes, penalties, and interest accrued before the Court's determination must be paid in full. The Court is required to send notice of the determination to the business owner and each contracting party.

The Court's determination on the complaint is final. The expedited procedures described in Chapter 2506. of the Revised Code involving appeals of final orders, adjudications, or decisions of government agencies and administrative officers do not apply to requests for exemption from JEDD income tax.¹⁵

Enterprise zones

Enterprise zones are areas designated by a municipal corporation or county for the purpose of fostering economic development. The municipal corporation or county may enter into enterprise zone agreements with businesses that establish or expand within or relocate to the zone in exchange for property tax and other incentives or governmental support negotiated as part of the enterprise zone agreement. For a municipal corporation to designate a zone, it must be a principal city of a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget; any county may designate a zone with the consent of the affected municipal corporation or township. The minimum criterion for having a zone designated is that the zone has a population of at least 4,000 (municipal zones) or 1,000 (county zones). If other additional criteria that are indicative of economic distress are also satisfied, incentives may be offered to a somewhat broader range of companies. If only the population criterion is satisfied, companies are eligible for incentives only if they establish new operations in the zone without reducing employment elsewhere in Ohio, relocate from another state, expand at an existing site within the zone, or relocate from elsewhere in Ohio and obtain a special waiver from Development Services Agency (DSA) indicating that the relocation is necessary.

¹⁵ R.C. 715.72(Q) and 718.01(C)(19).

Certification of the zone

Under continuing law, a municipal corporation or county seeking to designate an enterprise zone must submit a petition to the DSA for certification. DSA examines the petition to determine if all of the criteria for establishing a zone are met before certifying the zone. One such criteria bars any place of business used primarily for making retail sales from being included in the zone unless it is located in an impacted city.¹⁶ Under the bill, a municipal corporation or county seeking to include a retail facility in an enterprise zone may petition the board of education of each school district affected by the proposed zone to waive this retail facilities exclusion. The school boards may waive the exclusion by adopting a resolution approved by the majority of board members.

The bill specifies that, by waiving the retail facilities exclusion, a school board does not waive its right to approve enterprise zone agreements or receive notice of the agreements as required by ongoing law. Ongoing law requires enterprise zone agreements to be approved by school boards if the property tax exemption percentage exceeds specified percentages of the otherwise taxable value (75% in most cases) and if the exemption continues for more than ten years.¹⁷

Ohio New Markets Tax Credit

The bill expands the class of low-income community businesses eligible to receive credit-eligible investments for the purposes of the Ohio New Markets tax credit to include businesses that derive 15% or more of revenue from real estate sales or rentals. Continuing law authorizes a nonrefundable tax credit with a four-year carryforward against the insurance and financial institution taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income

¹⁶ Under continuing law, not in the bill, an "impacted city" is a municipal corporation satisfying either of the following two criteria:

(1) The municipal corporation, "in an attempt to cope with the problems of urbanization, to create or preserve jobs, and employment opportunities, and to improve the economic welfare" of its residents, has done both of the following at some time:

(a) Taken affirmative action to permit a metropolitan housing authority to construct or lease housing within the municipal corporation.

(b) Has had a program for community development certified by DSA.

(2) Been declared a major disaster area under pertinent federal law and has been extensively damaged or destroyed by a major disaster (i.e., tornado, hurricane, flooding, fire, earthquake, or storm). A municipal corporation may qualify under this provision only for up to two years. (R.C. 1728.01.)

¹⁷ R.C. 5709.61, 5709.634, and 5709.82.



community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

Federal credit

Federal law provides a credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a United States corporation or partnership with the primary mission of serving or providing investment capital for businesses in low-income communities, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities."¹⁸

Ohio credit

The Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in CDEs that use substantially all of the proceeds to make investments in qualified active low-income community businesses. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. A qualified equity investment is an equity investment in a qualified CDE.

To be a qualified equity investment, the equity investment must be acquired after October 16, 2009, for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. The investment may be transferred, so long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance. Credits must be applied over a seven-year period, beginning on the date a qualified equity investment is made and continuing for the next six anniversary dates.

Credit-eligible businesses

The bill allows a CDE to make credit-eligible investments in a low-income community business that derives 15% or more of its annual revenue from renting or

¹⁸ 26 U.S.C. 45D (2012).



selling real estate.¹⁹ Under current law, investments in such businesses would not be counted towards the required investment that would allow an investor to be eligible to claim the Ohio credit. The CDE is required to invest at least 85% of the investment in low-income community businesses and at least 75% in the seventh year.

Property tax exemption for SBA microloan intermediary lenders

The bill exempts from taxation certain real property that is owned by a nonprofit corporation exempt from federal income tax and that is selected by the Federal Small Business Association (SBA) as an intermediary lender in the Federal Microloan Program. Property would qualify for the exemption only to the extent that it is used by the nonprofit corporation primarily for small business lending, economic development, job training, entrepreneur education, or associated administrative purposes.²⁰

Under the Federal Microloan Program, SBA provides loans funds to nonprofit organizations certified by SBA as intermediary lenders. In turn, the intermediaries make small short-term loans (up to \$50,000) to eligible borrowers to provide working capital or the purchase of inventory, supplies, furniture, fixtures, machinery, or equipment. The terms of both the SBA loan and the intermediary loans to eligible businesses are regulated by SBA. According to a report compiled by SBA, the Economic and Community Development Institute is the only intermediary lender located in Ohio.²¹

Reporting to Municipal Net Operating Loss Review Committee

The bill extends the deadline for municipal corporations to report information necessary for the Municipal Income Tax Net Operating Loss Committee to compute the fiscal effects of recent changes to the law governing municipal income tax net operating loss (NOL) deductions. Under the bill, the deadline, which is currently September 30, 2016, is extended to December 31, 2016.

The Committee was created in H.B. 5 of the 130th General Assembly to evaluate and quantify the potential financial impact of requiring municipal corporations to allow NOLs to be carried forward for five years, as required in H.B. 5. The Committee's 11-person membership consists of legislators, municipal corporation and taxpayer representatives, and a Governor's appointee.

¹⁹ R.C. 5725.33(A).

²⁰ R.C. 5709.12(H).

²¹ "Participating Microloan Intermediaries Report," Small Business Administration Partner Identification and Management System, January 11, 2016, available at: https://www.sba.gov/sites/default/files/articles/microlenderrpt_160111.cfm_.pdf.



Under continuing law, municipal corporations that levied an income tax in 2011, 2012, and 2013 are required to report to the Committee the difference between the municipal corporation's actual or projected revenue for years 2012 to 2018 under its pre-H.B. 5 treatment of NOL carryforwards and the revenue that would have resulted in each of those years if the municipal corporation had allowed NOLs to be carried forward for five years. The bill extends the date by which this information must be submitted to December 31, 2016.

If the Committee receives reports from at least 13 municipal corporations – including at least three with a population of more than 250,000, five with a higher ratio of business taxpayers than the state average, and five with a higher ratio of individual taxpayers than the state average – then the Committee is required to calculate the total revenue impact reported by municipal corporations. A majority of the Committee is required, by May 1, 2017, to issue a report of the Committee's findings and recommendations to address any revenue shortfalls, which may include using supplemental funds from the Local Government Fund to mitigate those shortfalls. After issuing the report, the Committee will cease to exist on May 1, 2017.²²

Income tax check-off thresholds

Under continuing law, there are six income tax refund contributions or "check-offs" that allow taxpayers to contribute all or part of their Ohio income tax refund to one of several state funds: the Natural Areas and Preserves Fund, the Nongame and Endangered Wildlife Fund, the Military Injury Relief Fund, the Ohio Historical Society, the Breast and Cervical Cancer Project, and the Wishes for Sick Children Income Tax Contribution Fund. The contribution is made on the taxpayer's annual income tax return.

Under current law, if the amount contributed to one of these funds is less than \$150,000 in two consecutive calendar years, the Tax Commissioner is required to remove the fund from the income tax return for the following year. The bill changes this minimum contribution threshold to \$50,000 over five consecutive years.²³

²² Sections 3 and 4.

²³ R.C. 5747.113.



HISTORY

| ACTION | DATE |
|-----------------------------------------------|----------|
| Introduced | 04-30-15 |
| Reported, H. Economic & Workforce Development | 12-03-15 |
| Passed House (95-0) | 02-10-16 |
| Reported S. Ways and Means | 05-25-16 |

H0182-RS1-131.docx/emr

